

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT
OF PUBLIC SAFETY,

Petitioner,

v.

NORMAN W. WOMACK,

Respondent.

No. 13-0026 PO

DECISION

Respondent Norman W. Womack's peace officer license is subject to discipline under § 590.080.1(2), RSMo,¹ because he committed criminal offenses.

Procedure

The petitioner, the Director of the Department of Public Safety, filed a complaint on January 2, 2013, seeking to discipline Mr. Womack's peace officer license.

Mr. Womack was served on March 11, 2013 with our notice of complaint and notice of hearing, pursuant to the procedure established in § 621.100.1, RSMo. The material was left at his dwelling house or usual place of abode, with a person over the age of 15 residing or present there, specifically, his mother, Dawn Womack. Mr. Womack did not answer or otherwise

¹ All references to "RSMo" are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

respond to the complaint. Accordingly, he has admitted the allegations contained therein.
1 CSR 15-3.380(7)(C)^{1,2}

We held a hearing on June 26, 2013. The Director was represented by Assistant Attorney General Ron Dreisilker. Mr. Womack did not appear. At the hearing, the Director introduced into evidence the request for admissions he served on Mr. Womack, which Mr. Womack did not answer. By failing to answer the requests, Mr. Womack is deemed to have admitted them. *See* Mo. S. Ct. Rule 59.01; 1 CSR 15-3.420(1) (making rules of civil procedure applicable to cases before this Commission). The Director also offered certified records from a 2011 criminal proceeding against Mr. Womack in Pemiscot County Circuit Court; a certified record from a Scott City proceeding against Mr. Womack; and a custodian of records affidavit concerning Mr. Womack's peace officer licensure, which were admitted. We base our findings of fact on the allegations contained in the complaint, the requests for admissions, the certified records, and the affidavit of the custodian of records.

Findings of Fact

1. Norman W. Womack's Missouri peace officer license is presently active and has been since November 11, 2008.

2. On October 24, 2009, Mr. Womack concealed in the County of New Madrid, Missouri, certain personal property, a sofa love seat and refrigerator with ice maker, when he failed to return the items to a creditor holding a security interest in them; knowing the items were subject to a security interest; and having the purpose to defraud the secured creditor, in violation of § 570.180, RSMo (2000).

² All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

3. On April 18, 2010, Mr. Womack operated a motor vehicle in New Madrid, Missouri, while in an intoxicated condition, in violation of § 577.010.1, RSMo.

4. On August 18, 2010, Mr. Womack pleaded guilty in New Madrid, Missouri Municipal Court, to driving while intoxicated, in violation of New Madrid Municipal Ordinance § 56-610. The ordinance provides in pertinent part that “[a] person commits the crime of driving while intoxicated if he operates a motor vehicle while in an intoxicated or drugged condition.”³

5. On January 8, 2011, Mr. Womack operated a motor vehicle in Caruthersville, Missouri, in a careless and imprudent manner, in violation of § 304.012, RSMo (2000). He pleaded guilty in Pemiscot County Circuit Court on September 19, 2011.

6. On January 29, 2011, Mr. Womack operated a motor vehicle in Scott City, Missouri, while in an intoxicated condition, in violation of § 577.010.1, RSMo.

7. On January 29, 2011, Mr. Womack operated a motor vehicle in Scott City, Missouri, while his driver’s license was suspended and knowing it was suspended, in violation of § 302.321, RSMo.

³ The Director argued that this Commission could take official notice of the municipal ordinance. Section 536.070(6), RSMo (2000), permits us to take official notice of matters in the same manner as courts. Section 479.250, RSMo (2000), allows a municipal court to take judicial notice of a municipal ordinance when a certified copy of the ordinance is “on file with the clerk serving the judge hearing the case and readily available for inspection by the parties.” Otherwise, § 490.240, RSMo (2000), permits a court to receive a certified copy of a municipal ordinance into evidence. The procedure under § 479.250 is not available here, so we cannot take official notice, and the Director did not offer a certified copy as provided under § 490.240.

Nevertheless, the content of the ordinance is proven by Mr. Womack’s admission. The Director set out the content of the ordinance as an allegation in his complaint. *See* p. 2, ¶ 6. As noted elsewhere, Mr. Womack failed to answer the complaint, and so admitted the allegations it contains, including ¶ 6. 1 CSR 15-3.380(7)(C)1.

Conclusions of Law

We have jurisdiction. § 590.080.2, RSMo.

The Director is responsible for issuing and disciplining the licenses of Missouri peace officers. §§ 590.020, .030, and .080, RSMo. When the Director files a complaint with this Commission under § 590.080.2, asking us to determine there is cause for discipline, he bears the burden of proving so by a preponderance of the evidence. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Here, the Director alleges there is cause for discipline of Mr. Womack’s peace officer license under § 590.080.1(2) because Mr. Womack “[h]as committed...criminal offense[s], whether or not...criminal charge[s have] been filed[.]” We agree.

The evidence demonstrates Mr. Womack committed six criminal offenses. He defrauded his secured creditor in 2009, in violation of § 570.180; operated a motor vehicle while intoxicated in April 2010, § 577.010.1; pleaded guilty in August 2010 to driving while intoxicated, New Madrid Municipal Ordinance § 56-610; operated a motor vehicle in a careless and imprudent manner in 2011, § 304.012; operated a motor vehicle while intoxicated in 2011, § 577.010.1; and operated a motor vehicle knowing his driver’s license was suspended in 2011, § 302.321.

We note that he pleaded guilty with respect to two of the six offenses. The record does not reflect whether charges were filed and the outcomes, if any, with respect to the other four. But § 590.080.1(2) is triggered by commission of a criminal offense, not the filing of charges or

subsequent adjudication. The lack of charges or final adjudication of four criminal offenses is therefore of no import.

Finally, we note that the proceeding concerning the municipal ordinance violation, like the prosecution of any municipal ordinance violation, was a civil proceeding. *City of Columbia v. Henderson*, 399 S.W.3d 493, 494 (Mo. App. W.D. 2013). But the issue for purposes of § 590.080.1(2) is simply the commission of a criminal offense, not the civil or criminal nature of any proceedings. New Madrid Municipal Ordinance § 56-610 is identical in all substantive respects to § 577.010.1, the statute criminalizing driving while intoxicated. Therefore, Mr. Womack's plea of guilty to the ordinance violation evidences conduct constituting a criminal offense for purposes of § 590.080.1(2).

Mr. Womack committed six criminal offenses. Cause for discipline therefore exists under § 590.080.1(2).

Summary

Cause exists for discipline of Mr. Womack's peace officer license under § 590.080.1(2).

SO ORDERED on July 30, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner